

New York City Department of Finance

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The New York City Department of Finance (“the Department”) is proposing an amendment to the Department’s rules concerning representatives at Parking Violations Bureau (“PVB”) hearings. This amendment revises the time period that a representative may be suspended from appearing before the PVB after a finding that the representative violated one or more Department representative conduct rules. This amendment also adds a new definition relating to brokerage companies.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place at 11:00am on May 24, 2018. The hearing will be in the Department hearing room at 345 Adams Street, 3rd Floor, Brooklyn, NY 11201.

This location has the following accessibility option available:

Wheelchair Accessible

How do I comment on the proposed rule? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the Department through the NYC rules website: <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to loewenbergerj@finance.nyc.gov.
- **Mail.** You can mail written comments to NYC Department of Finance, Legal Affairs Division, 345 Adams Street, 3rd Floor, Brooklyn, NY 11201, Attn: Jeremy Loewenberger.
- **Fax.** You can fax written comments to NYC Department of Finance, Attn: Jeremy Loewenberger at (718) 488-2491.
- **By speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Joan Best at (718) 488-2007, or you can sign up in the hearing room before the hearing begins on May 24, 2018. You can speak for up to three minutes.

Is there a deadline to submit written comments? The deadline to submit written comments is May 24, 2018.

What if I need assistance to participate in the hearing? The hearing will be held at 345 Adams Street, 3rd Floor, Brooklyn, NY 11201. The back entrance (on Pearl Street) is accessible to persons using wheelchairs and others with disabilities. Accessible restrooms are available. Materials in alternative formats, ASL interpreters, real-time captioning and other accommodations will be made available upon request. Please contact Joan Best; by telephone, by calling (718) 488-2007 or by email at bestj@finance.nyc.gov to make your accommodation

requests. Please provide at least 72 hours' notice prior to the hearing to ensure availability. In order to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public hearings are requested to refrain from using perfume, cologne, and other fragrances.

Can I review the comments made on the proposed rule? You can review the comments that have been submitted online by visiting the NYC rules website: <http://rules.cityofnewyork.us/>. In addition, copies of all submitted comments concerning the proposed rule and a summary of oral comments from the hearing will be available to the public a few days after the hearing at NYC Department of Finance, Legal Affairs Division, 345 Adams Street, 3rd Floor, Brooklyn, NY 11201.

What authorizes Department of Finance to make this rule? New York State Vehicle and Traffic Law section 237, section 19-203 of the Administrative Code of the City of New York, and New York City Charter ("Charter") sections 1043 and 1504 authorize the Department to make this proposed rule. This proposed rule was not included in the Department's regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find the Department of Finance's rules? The Department's rules can be found in Title 19 of the Rules of the City of New York at <http://rules.cityofnewyork.us>.

What laws govern the rulemaking process? The Department must meet the requirements of section 1043 of the Charter when creating or amending rules. This notice is made according to the requirements of section 1043 of the Charter.

STATEMENT OF BASIS AND PURPOSE

The Department of Finance's Fleet Program is a voluntary program that assists companies with one or more commercial vehicles in obtaining hearings for outstanding parking violation summonses. Similarly, the Department's Car Rental Program is a voluntary program that assists vehicle rental companies in managing parking summonses. Under these programs, when companies receive summonses for their vehicles, they may be represented at hearings in the Department's Commercial Adjudications Unit (CAU) by their employees or by brokers.

To deter misconduct by representatives who appear at PVB hearings, this proposed rule authorizes DOF to suspend brokers, brokerage companies and employees of companies that participate in the Fleet Program from appearing before the PVB for any period up to life, after a finding that the representative violated one or more Department representative conduct rules. Examples of rule infractions include attempting to coerce or influence Administrative Law Judges ("ALJs") and submitting fraudulent evidence to ALJs at PVB hearings.

This proposed rule also adds a new definition relating to brokerage companies as this proposed rule extends liability separately to brokerage companies.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Amendments to Rules Relating to Parking Violations

§ 1. Paragraph (1) of subdivision (a) of section 39-09 of Chapter 39 of Title 19 of the Rules of the City of New York is amended to read as follows:

(a) Brokers. (1) Definitions.

Broker. “Broker” means a person who:

- (i) is not the owner or operator of the summonsed vehicle;
- (ii) represents another person or firm;
- (iii) requests a hearing three or more times within any six month period; and
- (iv) is not an employee of the respondent (as defined in § 39-09(b)(1)).

Brokerage Company. “Brokerage Company” means a corporation, company, partnership or entity that:

- (i) is not the owner or operator of the summonsed vehicle;
- (ii) engages brokers to represent another person or firm; and
- (iii) requests a hearing three or more times within any six month period.

§ 2. Paragraph (9) of subdivision (a) of section 39-09 of Chapter 39 of Title 19 of the Rules of the City of New York is amended to read as follows:

(9) *Penalty for violation of these rules.* Any broker or brokerage company who willfully or repeatedly violates these rules may be barred from representing clients at PVB in any capacity. The Commissioner may, after providing notice to the broker and, if the brokerage company is also subject to suspension, the brokerage company, and an opportunity to be heard, suspend the broker for any period up to [five years] life from appearing before the Department in any capacity, except that the broker may appear on parking violations issued in the broker's name, and/or suspend a brokerage company for any period up to and until the dissolution of the brokerage company from appearing before the Department in any capacity, except that the brokerage company may appear on parking violations issued in the brokerage company's name. Such notice(s) will inform the broker and, if the brokerage company is subject to suspension, the brokerage company, of the reasons for the proposed suspension and that the broker and the brokerage company, if the brokerage company is subject to suspension, has the right to present information as to why the broker and/or brokerage company should not be suspended to the Commissioner, or his or her designee, within 10 business days of delivery of the notice by hand or 15 business days of the posting of notice by mail. Any suspension of a

broker will apply solely to the broker unless the Department has evidence either that the brokerage company which employed the broker had knowledge of the broker's infractions and did not inform the Department or that the standard practice of [the broker's company] such brokerage company was to commit infractions in its interactions with the Department regardless of the broker involved. Any suspension of a brokerage company will apply to all brokers employed by the brokerage company for the period during which those brokers remain employed by the brokerage company. Any brokerage company shall be barred from representing clients at PVB in any capacity when a broker subject to a life suspension is employed by, engaged by, is subcontracted to, consults with or has any ownership interest in, such brokerage company.

§ 3. Paragraph (9) of subdivision (b) of section 39-09 of Chapter 39 of Title 19 of the Rules of the City of New York is amended to read as follows:

(9) *Penalty for violation of these rules.* Any employee who willfully or repeatedly violates these rules may be barred from representing his or her employer at PVB in any capacity. The Commissioner may, after providing notice to the employee and an opportunity to be heard, suspend the employee for any period up to [five years] life from appearing before the Department in any capacity, except that the employee may appear on parking violations issued in the employee's name. Such notice will inform the employee of the reasons for the proposed suspension and that the employee has the right to present information as to why the employee should not be suspended to the Commissioner, or his or her designee, within 10 business days of delivery of notice by hand or 15 business days of the posting of notice by mail. Any suspension will apply solely to the employee unless the Department has evidence either that the standard practice of the employer was to commit infractions in its interactions with the Department regardless of the employee involved or that the employer had knowledge of the employee's infractions and did not inform the Department.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Governing Conduct of Representatives at PVB Hearings

REFERENCE NUMBER: 2018 RG 015

RULEMAKING AGENCY: Department of Finance

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: April 10, 2018

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Governing Conduct of Representatives at PVB Hearings

REFERENCE NUMBER: DOF-35

RULEMAKING AGENCY: Department of Finance

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) There is no cure period/mechanism because the proposed rule sanctions behavior and actions already committed.

/s/ Francisco X. Navarro
Mayor's Office of Operations

April 10, 2018
Date